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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,731	03/21/2004	Peter A Kiss		2730

7590 08/12/2005
 Peter Kiss
 26518 Royal Vista Ct.
 Santa Clarita, CA 91351

EXAMINER

ELDRED, JOHN W

ART UNIT	PAPER NUMBER
3644	

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/708,731	Applicant(s) KISS	
	Examiner J. Woodrow Eldred	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03212004</u> . | 6) <input type="checkbox"/> Other: ____. |



DETAILED ACTION

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, it is not clear how the sensor lever, the catch lever, and the return spring are structurally related to each other or the other claimed elements. In claim 1, paragraph f, the structure of the tab protruding through the slot is not clearly or accurately claimed, since it appears that the tab will only protrude if the magazine follower is in the upper most position, but this is not clear in the claim language. In claims 2 and 4, "AK47-type or its variant" is alternative and indefinite.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin (6,510,778) in view of Herring (6,851,346).

Irwin discloses a firearm with a mechanism for preventing a bolt carrier from moving forward after firing the last round of ammunition, comprising a sensor lever 2, a "thumb release" 12, a catch lever 1 pivoted on the housing, and a magazine in which the sensor lever detects the lack of a round of ammunition and activates the catch lever to hold open the bolt carrier. Irwin fails to show the magazine having a tab mounted on the magazine

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follower such that it protrudes out the top of the magazine when the magazine is empty, or that the thumb release is on the sensor lever. Herring teaches that it is known to provide a tab on the follower of a magazine such that a lever senses the lack of rounds in the magazine and acts to hold open the bolt. See especially column 9, lines 45-50. Motivation to combine is the mere substitution of one known empty magazine sensing means for another that will function in substantially the same manner. To employ the teachings of Herring on the firearm of Irwin and have a magazine with a tab on the magazine follower is considered to have been obvious to one having ordinary skill in the art. The mere substitution of the release lever 12 from the catch lever to the sensor lever is also considered to have been obvious to one having ordinary skill in the art. This would involve merely having the release attached to a different part of the system selectively holding or releasing the bolt carrier and it would function in exactly the same manner no matter to which of the two levers it was attached, since merely pushing the release lever and causing either one of the catch or sensor to pivot would result in the bolt carrier being released after it was locked in the open position.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Westrom and Ruger et al are cited as being of interest since they disclose bolt locking means.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Woodrow Eldred whose telephone number is 571-273-6901. The examiner can normally be reached on Monday to Thursday, from 8:00 a.m. to 5:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



J. Woodrow Eldred
Primary Examiner
Art Unit 3644

JWE